REMARKS

In the Office Action mailed on July 1, 2005, claims 1-13 have been rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. The Office Action suggests that the claims are directed to non-statutory subject matter because there is no significant claim recitation of a data processing system or a calculating computer to perform the data processing operation. Claims 1-13 have been amended herein to make clear that they require the use of one or more computers to carry out the steps of the claimed method. Accordingly, the rejection should be withdrawn.

Claims 6 and 10 have been rejected because of informalities noted in the Office Action. These informalities have been addressed herein through amendment as suggested in the Office Action. As a result, the objection should be withdrawn.

Claims 1-7 and 14-16 have been rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,374,288 ("the '288 patent"). Claims 7 and 16 have been cancelled herein. The remaining claims subject to this rejection have been amended herein to more clearly reflect differences between the claimed invention and the disclosure of the '288 patent. The claims, as amended, include elements not disclosed or suggested by the '288 patent. This rejection should therefore be withdrawn.

The '288 patent discloses methods for providing changes in the bit rate of communication over a DSL modem in response to the customer's request. The '288 patent, Abstract. Accordingly, it teaches methods for changing the speed of an on-line communications session. Id. It is submitted that the '288 patent fails to disclose a method for pricing an on-line session as is claimed by claims 1-6 and 14-15.

The Office Action refers to Tables 1, 2 and 3 of the '288 patent that display pricing for different customer-selected communications bit rates. Importantly, however, the '288 patent fails to disclose any steps for determining the pricing shown in Tables 1-3. Instead, the '288 patent merely discloses displaying a monthly charge: "Notice that an estimate of the monthly charge for this schedule is shown (in Table 3)." Id., col. 14, lines 25-28. The '288 patent is silent as to how its "estimated monthly charge" is determined,

except to say that: "The Monthly Charge is dynamically updated as the other fields on this page are modified." Id., lines 63-64. No particular steps of calculating the monthly price are disclosed. Claims 1-6 and 14-15, on the other hand, each require multiple individual steps for pricing an on-line session. Because it fails to disclose these steps, the '288 patent cannot properly support an anticipation rejection of the claims.

For example, each of claims 1-6 and 14-15 recite steps of assigning a usage rate having units of time to each of the tiers. An additional step of assigning an incremental charge to each of the tiers is required. The incremental charge has units of price and is independent of time. The '288 patent fails to disclose steps of assigning a time-based usage rate to each tier, and a time-independent incremental charge to each tier.

A step of determining a tier usage amount for the session is also required by claims 1-6 and 14-15 by determining how much time was spent in each of the tiers. A usage cost for each tier is calculated by multiplying the tier usage amount by the usage rate for each tier. A total usage cost is then determined by summing the tier usage costs. A total incremental cost is calculated by summing the incremental charges for each tier entered during the session. Finally, the price of the session is determined by summing the total usage cost and the total incremental cost. Accordingly, claim 1 requires (among other steps) steps of pricing a session using two individual components: a time based usage cost and a time-independent incremental cost.

These multiple steps required by claims 1-6 and 14-15 are not disclosed by the '288 patent. Instead, the '288 patent merely discloses "dynamically determining" a flat monthly rate. The '288 patent, col. 14, lines 63-64. The '288 patent does not disclose, for example, determining how much time is spent online during any session as is required by claim 1-6 – and in fact teaches away from this step since it discloses pricing on-line use on a flat monthly rate under which the amount of time actually spent on-line is not required for determining a session price.

The '288 patent also fails to disclose the step of assigning an incremental charge that is independent of time to each of the tiers, as is claimed by each of claims 1-6

and 14-15. Further, the '288 patent fails to teach or suggest the claimed step of determining the price of session by summing a usage cost (time-based) with a incremental cost (time-independent). The '288 patent teaches away from these steps, in fact, since it discloses a flat monthly price for on-line service.

Claims 8-13 and 17-20 have been rejected under 35 U.S.C. §103(a) as unpatentable over the '288 patent in view of U.S. Patent No. 6,615,034 ("the '034 patent"). Claims 8-12 depend from claim 1 and are allowable over the references for the same reasons as is claim 1. Claim 13 is likewise allowable over the references since it includes multiple elements not disclosed or suggested by either of the cited references. For example, claim 13 requires assigning an incremental charge to each of the tiers that has units of price independent of time, and a usage rate to each of the tiers that has units of time. Claim 13 further requires pricing the session by summing a total usage cost (time-based) with a total incremental cost (time independent). As explained above, the '288 patent fails to disclose these recited steps.

Several of these claims are allowable over the cited references for additional reasons as well. For example, claims 8 and 9 recite that at least one of the tier usage rates is negative. The July 1, 2005 Office Action suggests that the '034 patent discloses this required element. It is respectfully submitted, however, that the '034 patent simply discloses applying a discount to a price. The '034 patent, col. 7, line 54 – col. 8, line 8. This is substantially different than the claimed negative usage rate which has units of price per unit time (e.g., "- 1$ per minute"). The '034 patent fails to disclose a negative usage rate having units of price per unit of time, but instead merely discloses applying a discount to a price. Id. As explained in the specification, use of the claimed negative usage rate having units of price per time can be useful, for example, to encourage customers to spend more time online – the longer they stay on-line the lower the price of the session becomes: "The line segment 20 (of FIG. 1) shows that the total session cost decreases as it proceeds through Tier 4 due to the - $1/min. usage rate. Like negative incremental charges, it will be appreciated that ... negative usage rates may be

useful to encourage users to remain on-line until their usage has crossed over into a higher profit tier." Specification, p. 7, line 22 - p. 8, line 3.

Claims 17 and 18 depend from independent claim 14 and are allowable over the cited references because for the same reasons as claim 14 is allowable as discussed above in detail. For example, claim 14 requires assigning a time-based usage rate to each of the tiers and assigning an incremental charge to each of the tiers that has units of cost only and is independent of time. Claim 14 further recites step of calculating the price for the session by summing the total usage cost (which is time-based) and the total incremental cost (which is time-independent). Further, claim 17 requires at least one negative usage rate, and claim 18 requires at least one negative usage rate. These elements are also not disclosed by the cited references. Claims 17 and 18 are therefore allowable over the references.

Claim 19 also recites the step of assigning a time-independent incremental charge to each of the tiers, and of assigning a usage rate to each of the tiers that has units of price per unit time. At least one of the usage rates is required to be negative. Claim 19 further recites calculating a price for the session by summing the total usage cost (which is time-based) and the total incremental cost (which is time independent). As explained above, these steps are not disclosed or suggested by either of the references.

Claim 19 also requires a step of assigning a beginning threshold value for each of the tiers, and a step of determining a respective of the tiers to have been entered during the session if the usage value is greater than the beginning threshold value for the respective tier. A total usage value for the session is required to be determined by determining the total amount of time spend on-line during the session. The cited references fail to disclose these required steps. As a result, claim 19 is allowable.

Claim 20 requires a number of steps that are not disclosed by the cited references and is therefore allowable. For example, claim 20 further requires steps of assigning a usage rate to each of the tiers having units of price per unit time, and of assigning an incremental charge to each of the tiers having units of price only and being independent of time. A price for the session is calculated by summing the total usage

cost (which is time-based) and the total incremental cost (which is time independent). Again, the cited references fail to disclose or suggest these steps. The '288 patent simply discloses pricing on a flat monthly charge. For these and other reasons, claim 20 is allowable.
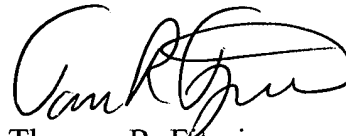
Finally, page 5 of the specification has been amended above to correct typographical errors that were identified therein.

It is submitted that the claims in their current form are allowable. Timely allowance is respectfully requested. Should the Examiner believe that there are any issues that remain for attention before a Notice of Allowance can be issued, the Applicant's undersigned attorney requests the favor of a phone conference to discuss the same.

Respectfully submitted,

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